

61 comment letters/emails

---

**A. Comments from 3 Individuals (same form letter)**

**1. Summary of Comment:**

The General Permit for Storm Water Discharges from Small MS4s should be similar to Phase I permits that have been adopted around the state. The State Water Resources Control Board has established that such Phase I permits are “doable” and thus, the General Permit should contain similar requirements in order to protect our beaches and waters.

**Response to Comment:**

The Phase II Regulations have expressly adopted EPA’s Interim Permitting Policy that was previously utilized for Phase I MS4 permits. The Interim Permitting Policy uses best management practices in first-round storm water permits, and expanded or better-tailored BMPs in subsequent permits. The General Permit is the first storm water permit for regulated Small MS4s and therefore a less stringent permit is appropriate.

\*\*\*\*\*

**B. Comments from 31 school districts, county offices of education, or firms representing school districts**

**1. Summary of Comment (4 generally the same):**

School districts that are within Phase I areas should be exempted or at least given one year to further review the requirements and coordinate with other agencies because they are part of communities that already implement a municipal storm water program. These surrounding communities have maps of their drainage and sewer systems, watershed boundaries, maps, model ordinances and inspection procedures for construction, industrial and commercial facilities, as well as training, public outreach and education programs to reach the public and business community. Furthermore, they comply with the General Construction and the General Industrial Storm Water Permits, which should significantly reduce pollutants from schools.

**Response to Comment:**

School districts own and operate systems of storm water conveyances on their property. School districts across the state occupy a significant amount of area and serve a large population, both directly to students and staff, and indirectly through the students to their families. Additionally, there is a lack of, or perceived lack of the local authority over storm water discharges from school districts. Therefore, school districts are subject to the General Permit. However, SWRCB recognizes that the time frame provided in the permit for application submittal is fairly strict and has revised the General Permit to clarify that the designation of governmental or non-traditional Small MS4s is subject to the timeframe of 40 CFR §123.35(b). Additionally, the permit allows up to 365 days after notification for governmental Small MS4s to submit an application for coverage under the General Permit.

While the surrounding municipalities may be familiar with their own MS4, they are not usually familiar with the school facility’s MS4. Similarly, while the surrounding municipalities

conduct training on storm water BMPs for municipal operations for their own staff, this doesn't in general currently include school district staff.

While there is some overlap between the three statewide storm water general permits, they target different pollutants and pollutant sources. The Construction General Permit has specific requirements for construction site operators/owners to comply with. For school districts, the Industrial General Permit applies to bus maintenance facilities and contains specific monitoring requirements for those facilities. While a bus maintenance facility is one potential pollutant source from school district properties, there are others. For example, litter and pool maintenance chemicals are not addressed by either of the Construction or Industrial General Permits. The Small MS4 General Permit requires evaluation of all potential pollutant sources and implementation of BMPs to reduce pollutants from the source or the potential of pollutants.

Phase I MS4 permits do require the permittee to implement education and outreach programs and some incorporate outreach to schools. However, part of the intention of the permit is to foster a more collaborative relationship in accomplishing this task.

## **2. Summary of Comment**

The school districts support the monitoring requirements contained in the revised draft General Permit. The school districts also support SWRCB staff's decision to remove receiving water limitations and specific design standards for the post-construction Minimum Control Measure from the draft permit and would like the SWRCB to adopt a policy reflecting those concepts, which the RWQCBs would follow.

### **Response to Comment**

The monitoring requirements of the adopted General Permit were not changed from the revised draft. However, by the expiration of the General Permit, larger Small MS4s or those that are fast-growing must achieve compliance with receiving water limitations through an iterative approach. During this time frame, these entities must adopt and enforce specific design standards for the post-construction minimum control measure.

\*\*\*\*\*

## **3. Summary of Comment (24 generally the same):**

"The actions of the State Water Resources Control Board (SWRCB) are on a direct collision course with actions being taken by" school districts. School districts have a multitude of projects that have been approved by the Division of the State Architect and are waiting for funding from the State Allocation Board (SAB) as a result of the approval of Proposition 47. However, these projects, many of which were designed years ago, do not include post-construction storm water BMPs and it would be very expensive to incorporate post-construction BMPs into the design at this point. School districts are requesting exemption of the already designed projects from requiring post-construction BMPs and that SWRCB staff work with SAB staff to develop formalized design standards.

### **Response to Comment**

The adopted General Permit specifically exempts school districts from redesigning projects to include post-construction requirements that have been submitted to the Division of the State

Architect prior to adoption of the General Permit and which receive final approval by the Department of Education by December 31, 2004.

**4. Summary of Comment**

School districts are unable to comply with the March 10, 2003 application deadline because the SWRCB did not conduct school-specific outreach in regards to the General Permit requirements, the SWRCB has not communicated with the SAB, and school districts do not understand the requirements or how to comply with them. Therefore they are requesting a one-year extension of the implementation date, or until such time as the concerns have been addressed.

**Response to Comment:**

The adopted General Permit revised the draft permit to make governmental Small MS4 designation pursuant to the state instead of “automatic” designation. The permit specifies 365 days for submittal of permit application. Additionally, the General Permit does not require immediate compliance with Storm Water Management Programs upon submittal. The application will specify the structure of the program and the timeline, prior to expiration of the General Permit, for program implementation. For example, the SWMP may specify that by the second year of the permit term, plans for new construction projects will incorporate post-construction BMPs and the facilities manager will conduct the plan check to ensure the BMPs have been incorporated. By that time for example, the school district will have a selection of appropriate post-construction BMPs for use at schools (trash enclosures, vegetated filter strips adjacent to parking lots, indirect connection of impervious areas to the MS4, etc.) and as part of the approval process, the facilities manager will check new designs for incorporation of these measures. The General Permit was modified to clarify this point.

**5. Summary of Comment**

Schools already have many responsibilities to be performed on tight budgets, adding storm water requirements to the list just makes a tough situation tougher. The school districts recommend that “school districts have their own general permit that relieves them of additional administrative requirements in exchange for a partnership with the SWRCB to develop an environmental educational and participation program for students on a district-by-district basis.”

**Response to Comment**

The Minimum Control Measures in the General permit are requirements specified in the federal regulations. An alternative permit would likely be just as stringent as the proposed General Permit, which is not intended to require excessive amounts of administrative effort. In addition, a separate permit would increase the administrative burden on the Boards. The General Permit does include several references to school districts that resolve the unique needs of the districts.

\*\*\*\*\*

**6. Summary of Comment:**

Proposition 47 approved 13.5 billion dollars to fund school construction but post-construction storm water BMPs were not factored into these projects. Coalition for Adequate School

Housing (C.A.S.H.) requests that adoption of the General Permit not occur until February or March of 2003. In the interim, SWRCB staff should conduct outreach targeting school districts. C.A.S.H. also requests that projects in the pipeline be exempted from the post-construction requirements.

**Response to Comment:**

SWRCB staff participated in outreach targeting school districts on December 13, 2002. Please see comment B.1 for the discussion of the compliance deadline for schools.

**7. Summary of Comment:**

Not all school districts or schools within the same district are subject to the same storm water requirements, which places an additional burden on schools to figure out and comply with different requirements. A school-specific statewide approach should be developed for implementing storm water permit requirements. The SWRCB and State Allocation Board should craft a statewide school specific approach to storm water compliance.

“School districts will have to acquire and/or comply with the requirements of multiple permits from different levels of government to achieve compliance under the current and pending California storm water regulations which include the provisions of the Phase II Municipal permit, the Phase I Municipal Permit, the General Construction Permit, and the General Industrial Permit.”

C.A.S.H. recommends a statewide specific storm water permit that also encompasses the requirements of the Construction and Industrial Permits because it would “1) eliminate overlapping requirements 2) reduce regulatory and administrative enforcement time necessary to monitor compliance 3) result in a more efficient use of severely constrained resources.” Additionally the organization feels that SWRCB must work closely with the Division of State Architect and the California Department of Education to develop such a permit.

Complying with the General Permit will impose significant costs on school districts, taking money away from educating students. C.A.S.H. recommends that school districts receive supplemental funds for storm water permit compliance.

**Response to Comment**

The General Permit can relieve school districts from being subjected to differing MS4 permit requirements. Although a school district may work with different surrounding entities that have their own permit requirements, the school district, as a permittee, may develop its own storm water program and implement it district-wide. The adopted General Permit allows Permittees to work with other entities but does not require it. If a school district is within a Phase I area and multiple cities, it can choose to not work with those other entities and develop and implement its own SWMP pursuant to the adopted General Permit.

School districts are subject to three storm water permits if they are within an area permitted or designated to be permitted for storm water discharges from an MS4, are doing construction which disturbs one acre of land or more, and if they operate a bus maintenance facility that performs fueling, washing, or repair of vehicles onsite. The three different permits (Small

MS4, Industrial, and Construction) target different pollutants and pollutant sources and have different requirements and standards. A single permit replacing the three permits would need to contain the requirements of each of the three permits and therefore provide little benefit. Additionally, a school-specific Small MS4 permit would contain the same requirements of the proposed General Permit (which are generally to develop and implement a SWMP that addresses six minimum control measures) because these were specified by USEPA.

While SWRCB staff are willing to communicate with other agencies, such as a County Office of Education and the Division of the State Architect regarding storm water permits at school districts, and in fact have begun this effort, these other agencies are not the operators of the storm sewer systems at the sites and therefore are not the permittees, and they are also not responsible for adopting the permit, which is the responsibility of the SWRCB. Staff can continue this effort after permit adoption.

\*\*\*\*\*

**8. Summary of Comment:**

Los Angeles Unified School District (LAUSD) is comprised of over 900 schools and continues to grow. LAUSD has a number of existing programs that address storm water quality.

**Response to Comment:**

In listing its existing storm water programs, LAUSD appears to imply that coverage under the General Permit is unnecessary. The size of LAUSD does set it apart from other entities in some regard, however, it also demonstrates the potential impacts, both positive and negative, LAUSD facilities can have on storm water quality. It appears that LAUSD is already doing quite a lot to protect storm water quality. The General Permit is designed to recognize those efforts, and require evaluation of those efforts and supplement of those efforts, if necessary.

**9. Summary of Comment:**

A cost/benefit analysis has not been conducted in regards to implementing the proposed General Permit. LAUSD is concerned with the fiscal impact of implementing the General Permit, especially if it must meet the March 10, 2003 deadline, which may not be possible. If each school site is required to have an individual SWMP and separate annual reports, the estimated cost for 944 sites would exceed \$1,800,000 for the SWMPs and \$1,000,000 per year for annual reporting, and over \$1,500,000 for implementation of the SWMP. These estimates do not include additional staffing, training, and related administrative costs. Because of these high costs, LAUSD recommends that the district only be required to submit one SWMP for elementary schools, one SWMP for middle schools, one SWMP for high schools and one SWMP for all maintenance and operations facilities, due on a revolving basis.

LAUSD feels that administratively, preparing one SWMP for elementary schools, one for middle schools, one for high schools, and one for maintenance facilities would be more beneficial, it may do that. The annual report submittal requirements are procedurally similar.

**Response to Comment**

The cost of permit compliance was evaluated by EPA, when it adopted regulations that the SWRCB is mandated to implement. Also, the SWRCB is not required to complete a

cost/benefit analysis when adopting municipal storm water permits. It must be recognized that the sheer number of facilities operated by LAUSD quickly elevate any incremental costs experienced at each facility, whether or not the costs are beneficial.

The General Permit designates LAUSD as a regulated Small MS4 requiring them to obtain coverage for the discharge of storm water from its MS4. To obtain permit coverage, a Notice of Intent to Comply with the permit must be submitted. This means, one NOI for the entire district, because the district operates the MS4. As discussed with LAUSD staff, LAUSD is required to develop and implement a storm water program that addresses the six minimum control measures. This does not necessarily mean an individual SWMP for each site. It does mean however, components of a program that address all relevant Minimum Control Measures at each site, specific activities at specific sites, and that personnel at individual sites be familiar with the components of the program that are specific to that site. One SWMP may be submitted for the entire district but it must incorporate all the activities conducted district-wide.

#### **10. Summary of Comment**

The March 10, 2003 permit coverage deadline cannot be complied with if an NOI, SWMP, and fee is required for each facility. LAUSD recommends one NOI for elementary schools, one for middle schools, one for high schools, and one for maintenance and operations facilities. A similar arrangement should be made for annual reports.

#### **Response to Comment**

Please see comment B.1 for the discussion of the compliance deadline for schools.

#### **11. Summary of Comment**

LAUSD requests that the General Permit clarify how already approved projects are to be addressed.

#### **Response to Comment**

Please see comment B.3 for the discussion of post-construction implementation schedule.

#### **12. Summary of Comment**

LAUSD feels that the Public Participation and the Illicit Discharge Detection and Elimination minimum control measures cannot be implemented at its schools beyond what is being done for existing programs.

#### **Response to Comment**

The requirements for the Public Participation and Involvement Minimum Control Measure is to comply with existing public meeting requirements, as a district would for many other programs. The minimum control measure is also intended to encourage the public (i.e. students, teachers, or parents) to play an active role in the protection of storm water. For example, a school might have a poster contest, plan field trips to wetlands or streams where storm water is discussed, or have a "campus clean up day." Knowing that the public might not respond, despite the best efforts of the permittee, compliance with the permit relies on efforts of the permittee to foster such activities.

Similarly, in part, the Illicit Discharge Detection and Elimination Minimum Control Measure requires the permittee to develop and implement a program to effectively prohibit, detect and eliminate discharges from the MS4 that are not entirely made of storm water.

### **13. Summary of Comment**

The General Permit requires an open-ended standard when it defines MEP as “an ever evolving flexible and advancing concept...” which “ignores the specific requirements and objectives of an NPDES Permit under the CWA and the Porter-Cologne Act.” Additionally, Discharge Prohibition B.2 of the General Permit prohibits discharges from the permitted MS4 that cause or threaten to cause a nuisance. This requirement potentially requires an exceedance of MEP. LAUSD suggests that the General Permit clarify how to comply with Section B.2.

#### **Response to Comment**

The definition of MEP contained in the permit is consistent with the discussion of MEP in Water Quality Order 2000-11. Next, the General Permit includes a prohibition against discharges that cause or threaten to cause a nuisance. This prohibition is consistent with and echoes the requirement that discharges shall not violate applicable RWQCB Basin Plans, as CWC §13240 requires that Basin Plan water quality objectives ensure the prevention of nuisance. “Public nuisance” is defined in CWC §13050 as a nuisance that affects an entire community or neighborhood, or a considerable number of persons. Schools, which house children, should not cause a public nuisance.

\*\*\*\*\*

### **14. Summary of Comment:**

The Separate Implementing Entity option does not go far enough in simplifying the permitting process. In some instances, coordination with multiple entities, multiple NOIs, and multiple fees would be required.

#### **Response to Comment:**

The Separate Implementing Entity option allows another entity to implement portions of a Permittee’s program. The other entity can be a city or county that is permitted for its storm water discharge or an entity that is not, such as a county office of education. If the Permittee wants to rely on separate entities for implementation of the entire program and the Permittee’s jurisdiction is within multiple other jurisdictions, multiple coordination efforts may be required. Multiple copies of the second page of the NOI must be submitted in that case to reflect the agreement between the Permittee and the other agencies. The permit’s requirements are consistent with EPA regulations. In any event, the multiple compliance options available should enable LAUSD to choose a cost-effective approach.

### **15. Summary of Comment:**

If school districts aren’t given an exemption, the General Permit should be revised to better accommodate regional/area wide coverage under the General Permit. Additionally, if school districts aren’t given an exemption, an additional 30 days should be given before adoption of the permit to allow school districts to become “more familiar with this regulatory process and hopefully submit additional suggested revisions and/or alternatives for a more flexible,

effective and less costly means of supporting” the goals of the State and Regional Boards. School districts should also be given 180 days from notification to submit their application.

**Response to Comment:**

The General Permit allows several options for permit coverage, including working with other entities either formally or informally to develop appropriate SWMPs. Next, the request for an additional 30 days has been granted through SWRCB’s decision not adopt the draft General Permit at its December 2, 2002 meeting. Finally, please see comment B.1 for the discussion of the compliance deadline for schools.

**16. Summary of Comment:**

The General Permit should specify that post-construction requirements should be applicable only to school facility projects awarded after December 31, 2004.

**Response to Comment:**

Please see comment B.3 for the discussion of post-construction implementation schedule.

**17. Summary of Comment:**

The major revisions to the monitoring provisions, receiving water language, and post-construction requirements in the October 28, version of the General Permit are supported.

**Response to Comment**

The monitoring requirements of the adopted General Permit were not changed from the revised draft. However, as discussed in comment B.2, receiving water language and post-construction requirements have changed. By the expiration of the General Permit, larger Small MS4s or those that are fast-growing must achieve compliance with receiving water limitations through an iterative approach. During this time frame, these entities must adopt and enforce specific source control measures and design standards for the post-construction minimum control measure.

**18. Summary of Comment:**

The NOI should be modified to accurately reflect that school districts are exempt from paying fees for the MS4 permit.

**Response to Comment**

As specified in Resolution 2002-0150 (fee schedule), school districts within cities and counties that pay an MS4 storm water permit fee are exempt from fees associated with the Small MS4 General Permit. Language was added to the General Permit to clarify this point.

\*\*\*\*\*

**C. Comments from 7 Cities or Counties**

**1. Summary of Comment:**

The noncompliance reporting requirement should be modified to exclude “any spill or discharge of non-storm water not authorized by this Order (non-storm water discharges not

prohibited by the Permittee pursuant to Section D.2.c of this Order need not be reported under this section)” from the 24 hour reporting requirement.

**Response to Comment:**

The noncompliance monitoring requirement has been revised to require 30-day notification to the RWQCB for instances of noncompliance except in instances that may endanger human health or the environment which require 24-hour oral and 5-day written notice.

**2. Summary of Comment**

The City of Buellton should not be designated as a regulated Small MS4. It is not part of an urbanized area, nor should it be designated pursuant to the State’s designation criteria. With a population of under 4,000 people, the City of Buellton falls below those communities, which EPA specifies that must be considered for designation (a population of 10,000 and population density of at least 10,000). Buellton is designated because it has high population density and discharges into a sensitive water body. Buellton is listed as an urban cluster, but the term “urban cluster” is not used in the designation criteria. Additionally, there are no findings that the discharges from Buellton contribute to the listing of the Santa Ynez River.

Because the designation of the City of Buellton is not required under the Clean Water Act, the General Permit presents an unfunded mandate. Additionally, under the requirements of the Porter Cologne Water Quality Control Act, the state must consider economic impacts of its regulating actions.

**Response to Comment:**

Section 123.35(b)(2) requires the permitting authority to apply the designation criteria, at a minimum to any small MS4 located outside of an urbanized area serving a jurisdiction with a population density of at least 1,000 people per square mile and a population of at least 10,000 people. This is a minimum, the State and Regional Boards have the authority to consider areas with less people and that are less densely populated. An urban cluster must have an initial core of people with a density of at least 1,000 people per square mile, so the term was used in Attachment 2. However, according to the Bureau of the Census, the City of Buellton has a population density of 2,045 people per square mile, well beyond the 1,000 people per square mile defining the “high population density” designation criteria.

The Cities of Buellton and Solvang as well as the communities of Santa Ynez and Los Olivos are contiguous developed areas that together create a concentration of urban runoff that discharges into the Santa Ynez River, a river listed on the 303(d) list of impaired water bodies. One of the constituents it is listed for, sediment, is attributed to urban runoff. While a specific analysis of the runoff from the City of Buellton was not done for this listing, it is known that in general, urban runoff contains wastes, including sediment, and the receiving water is impaired for, among other things, sediment. It appears to be an unwarranted exercise, without justification of reasons why the City of Buellton's discharge would be an exception, to conduct that specific analysis.

The designation does not constitute an unfunded mandate. As the permitting authority, the State and Regional Boards are required by the federal regulations, to evaluate potential sources

and designate those in accordance with the designation criteria. In complying with that requirement, the Cities of Buellton, Solvang, Santa Ynez, and Los Olivos were designated.

\*\*\*\*\*

**3. Summary of Comment:**

The City of Solvang, with a population of just over 5,000 people, should not be designated as a regulated Small MS4. The designation criteria are defined in such a way to encompass more MS4s than appropriate. The State should clarify how the status of each criterion was determined. The Santa Ynez River is listed on the 303(d) list after it passes the City of Lompoc, which is downstream from the City of Solvang. Additionally, the City does not support industrial or commercial activity that threatens the Santa Ynez River and the population density of Solvang is not high under the federal definition. Especially during these tight budgetary times, additional requirements for small communities should not be imposed.

**Response to Comment:**

The City of Solvang is part of a cluster of small communities that discharge storm water from an MS4 to the Santa Ynez River. The 1998 303(d) list of impaired water bodies lists the Santa Ynez River as impaired for its entire 70 mile length. Additionally, according to the Bureau of the Census, the City of Solvang has a population density of 2,143 people per square mile, which exceeds the definition of high population density in the General Permit. This density criteria is further exceeded with the influx of tourists that visit Solvang. The preamble to the Phase II regulations (page 68744, Federal Register, December 9, 1999) state that criteria should be used "with a great deal of flexibility as to how each should be weighed in order to best account for watershed and other local conditions and to allow for a more tailored case-by-case analysis." Additionally there is no federal definition of high density; the regulations require the permitting authority to define the criteria. SWRCB has developed the criteria and believe that their recommendations for designating regulated Small MS4s is consistent with the criteria.

In response to the unfunded mandate comment, these state rules do not apply to NPDES permits. Nevertheless, many of the things municipalities already do can be a part of a Storm Water Management Program either as is or with slight modification. Additionally, guidance from many communities already permitted for discharging storm water can also be used, resulting in lower costs.

\*\*\*\*\*

**4. Summary of Comment:**

The Cities of Buellton and Solvang and the unincorporated areas of Santa Ynez and Los Olivos in Santa Barbara County should not be designated as regulated Small MS4s. These communities were not notified of their potential designation prior to August 2002. Vandenburg Village and Mission Hills are also designated on Attachment 1 of the General Permit.

**Response to Comment:**

The issue of state designated Small MS4s has been addressed above. The County of Santa Barbara, and the Cities of Buellton and Solvang are currently aware of their designation status.

40 CFR §122.32(a)(1) specifies that small MS4s within an urbanized area as determined by the latest Decennial Census by the Bureau of the Census are regulated Small MS4s. Vandenburg Village and Mission Hills have been identified as being part of an urbanized area in the 2000 census.

**5. Summary of Comment:**

The Industrial Storm Water Permit requirements should be incorporated into the Small MS4 General Permit.

**Response to Comment**

The fact sheet to the General Permit provides a discussion of the relationship of the Industrial Storm Water Permit and the Small MS4 General Permit. The adopted General Permit was modified to specify that Small MS4s that have and comply with an Industrial Permit that covers the entire site (not just the industrial area) and that satisfies all six Minimum Control Measures, are not subject to the Small MS4 General Permit.

**6. Summary of Comment**

Analytical monitoring should not be required nor be left to the discretion of the RWQCB to require.

**Response to Comment**

Unlike the Phase I MS4 regulations, the Phase II Small MS4 regulations do not require analytical monitoring of the permittee's discharge. The adopted General Permit does not require chemical monitoring because it can be costly for many communities and may not correctly illustrate conditions or demonstrate efforts due to the variable nature of storm water. At the same time, as the language in the Fact Sheet to the General Permit suggests, there are many benefits of chemical monitoring. Additionally, monitoring data may be available as part of another program, such as TMDLs. Given these conflicting ideas, it is appropriate for the RWQCBs, who can make determinations on more site-specific or watershed-specific information and priorities, to decide whether to require monitoring.

\*\*\*\*\*

**7. Summary of Comment:**

Attachment 5 should be revised to clarify what must be included in the initial submittal and the federal identification number of the SWRCB should be included on the NOI. Many governmental agencies must have an invoice or billing statement.

**Response to Comment:**

The attachment has been revised.

\*\*\*\*\*

**8. Summary of Comment:**

What criteria will be used by the RWQCB to determine if a SWMP is inadequate and what procedure will be used to refine the program?

**Response to Comment:**

The RWQCB will evaluate the SWMP using professional judgment and EPA guidance, to determine whether it complies with the requirements in the General Permit. As stated in Regional Water Quality Control Board Authorities, §G of the General Permit, the EO will require refinement if necessary.

**9. Summary of Comment:**

What factors and criteria should a Permittee use to determine the economic feasibility of each best management practice?

**Response to Comment:**

The permittee must meet the technology-based MEP standard in complying with this General Permit. For a more comprehensive discussion of MEP, please see the Fact Sheet for this General Permit. If the Permittee determines a BMP is cost-prohibitive, it must document the cost and explain what alternative, effective BMP is being used.

**10. Summary of Comment:**

Chemical monitoring is not an effective or feasible method of meeting the monitoring objectives.

**Response to Comment:**

Please see comment C.6 for the discussion of chemical monitoring.

**11. Summary of Comment:**

How and when will we be informed by the SWRCB if we will be responsible for implementing one or more of the six Minimum Control Measures for another Permittee?

**Response to Comment:**

It is the choice of the entities involved whether to establish an SIE relationship. You must affirmatively agree to accept such responsibility.

**12. Summary of Comment:**

How will the RWQCB coordinate the efforts of multiple municipalities within a single watershed?

**Response to Comment:**

The RWQCB is not responsible for coordinating storm water programs throughout the watershed, though they may take on that role if they choose.

**13. Summary of Comment:**

Santa Rosa Junior College District Facility in Petaluma should be added to Attachment 3.

**Response to Comment:**

The facility has been added.

**14. Summary of Comment:**

What constitutes a significant contribution of pollutants for the purpose of implementing the Illicit Discharge Detection and Elimination Minimum Control Measure?

**Response to Comment:**

The definition of “Significant contributor” cannot be defined statewide for all pollutants. It also relies on the best professional judgment of the permittees and the RWQCB as well as site-specific conditions.

**15. Summary of Comment:**

What is the minimum drainage area subject to the requirement to notify the RWQCB 90 days prior to adding an outfall directed to a water of the U.S. to the MS4?

**Response to Comment:**

There is no minimum drainage area triggering the requirement for notification, which is consistent with the requirement to map all outfalls to waters of the U.S. However, new language was added making the reporting requirement an annual report requirement after the outfall has been added to the MS4, instead of 90 days prior to addition.

**16. Summary of Comment:**

Once adopted, will the General Permit be subject to amendment?

**Response to Comment:**

The General Permit may be modified, revoked, reissued, or terminated in accordance with 40 CFR §124.5

\*\*\*\*\*

**17. Summary of Comment:**

A statewide cost analysis should be completed for the General Permit. Costs associated with permit compliance are particularly concerning given Proposition 218 and the Howard Jarvis Taxpayer Association et al v. City of Salinas.

**Response to Comment:**

Please see comment B.9 for the discussion of cost analyses. The SWRCB is aware of the difficulties municipalities may face in funding compliance with the permit, and will make available information on various funding sources on its website.

**18. Summary of Comment:**

The definition of MEP in the General Permit is not consistent with the definition provided in the Final Rule. “Technology-based” should be replaced by “statutory.”

**Response to Comment:**

MEP is not explicitly defined in the CWA or in EPA regulations. In the Phase II Preamble (Federal Register), EPA emphasizes the lack of a precise definition. In response to the comment, SWRCB has revised the Fact Sheet of the General Permit to provide a discussion of MEP that is consistent with previous SWRCB Orders.

**19. Summary of Comment:**

The City of Roseville supports the removal of statewide design standards for municipalities with a population over 50,000.

**Response to Comment:**

The adopted General Permit was revised to include statewide design standards for larger Small MS4s and fast-growing communities. At 79,921 people, Roseville is approaching the size of a medium MS4, for which similar design standards have been identified as achieving MEP in Water Quality Order 2000-11. It is a fast-growing urban area where impacts on water quality are presumed.

**20. Summary of Comment:**

A municipality should be allowed to add to the list of allowable non-storm water discharges more that are not a significant source of pollutants.

**Response to Comment:**

The list provided in the regulations appears to be comprehensive of discharges that may not pose a threat to water quality in the urban environment. Permitted discharges are appropriately decided by the SWRCB in a permit rather than by a permittee.

**21. Summary of Comment:**

There should be a threshold or limit of outfall size and type that will be required to be covered in a small MS4 mapping effort.

**Response to Comment:**

40 CFR §122.34(b)(3)(ii)(A) requires a storm sewer system map, showing the location of all outfalls and the names and location of all waters of the United States that receive discharges from those outfalls and therefore, this requirement cannot be modified to be less stringent.

**22. Summary of Comment:**

The 90-day reporting requirement for new outfalls should be modified to require the information in the annual report and not require the land use or drainage area information.

**Response to Comment:**

The adopted General Permit was modified to require notification of new outfalls in the annual reports. The amount of information required by the notification was reduced to receiving water, location (map), and certification that the SWMP has been revised to include the new outfalls.

**23. Summary of Comment:**

Rather than requiring that the measurable goals and implementation of BMPs be scheduled to the month and year, the permit should require the scheduling during a specified year.

**Response to Comment:**

The language requiring a schedule of implementation of BMPs and achieving measurable goals that includes the month and year was taken from 40 CFR §122.34(d)(1)(ii). The Permittee has

the flexibility to specify when the measurable goals will be completed so it can specify the month and year in year increments and have at least a full year to complete the task. This may mean, however, that six tasks will be completed by the end of the year, for example, instead of one every other month (e.g. just because the Permittee specifies a longer time frame, it will not be allowed to do less).

**24. Summary of Comment:**

The City of Roseville supports the changes to the monitoring requirements in the October 28, 2002 draft General Permit.

**Response to Comment:**

Please see comment C.6 for the discussion of chemical monitoring.

**25. Summary of Comment:**

The noncompliance reporting requirement is onerous and unnecessary.

**Response to Comment:**

Please see comment C.1 for the discussion of noncompliance reporting.

\*\*\*\*\*

**D. Comments from 13 Non-Traditional Small MS4s or their representatives**

**1. Summary of Comment:**

The General Permit should clarify which government facilities are subject to the General Permit. There is significant overlap between the Industrial Storm Water Permit and the Small MS4 Permit. The relationship between the two needs to be clarified and the ability to modify one or the other program to minimize permit fees and administration costs needs to be addressed.

**Response to Comment:**

Please see comment C.5 for the discussion of multiple permits.

**2. Summary of Comment:**

Community college districts have similar concerns of K-12 School Districts.

**Response to Comment:**

The comments presented by the community college district have been addressed above.

**3. Summary of 3 comments submitted by the Department of the Navy:**

Naval Air Weapons Station, China Lake; Point Mugu Naval Air Warfare Center Weapons Division; and San Nicholas Island Naval Facility should be removed from Attachment 3. China Lake is not within an urbanized area, does not discharge to an interconnected Small, medium, or large MS4 permitted for discharging storm water, and it does not meet the criteria to be a designated Small MS4 itself. Point Mugu is a tenant of the Naval Base Ventura County and is not responsible for environmental permitting. San Nicholas Island is not within an urbanized

area, does not discharge to or qualify itself as a Small, medium, or large MS4 permitted for discharging storm water, and it is already covered by an the Industrial Storm Water Permit.

**Response to Comment:**

Naval Air Weapons Station, China Lake was removed from Attachment 3 and Point Mugu Naval Air Warfare Center was replaced with Naval Base Ventura County on Attachment 3 in accordance with the received comments. San Nicholas Island Naval Facility is approximately 65 miles off the coast and not a part of the urbanized area. However, it is adjacent to a Water Quality Protection Area (formerly known as an Area of Special Biological Significance) and therefore should be a regulated Small MS4 for the discharge to a sensitive water body.

\*\*\*\*\*

**4. Summary of Comment:**

The University of California supports the implementation of BMPs in lieu of imposing numeric effluent limitation.

**Response to Comment:**

The comment regarding effluent limitations has been noted.

**5. Summary of Comment:**

The reference to “sanctions” in the Construction Site Storm water Runoff Control should be broadened to add “or other effective mechanism.”

**Response to Comment:**

The suggestion was incorporated into the adopted General Permit.

**6. Summary of Comment:**

Industrial Storm Water Permit Requirements should be incorporated into the Small MS4 permit to reduce duplication of effort.

**Response to Comment:**

Please see comment C.5 for the discussion of multiple permits.

**7. Summary of Comment:**

Permit boundaries for non-traditional Small MS4s (as described in the Notice of Intent instructions) should be flexible.

**Response to Comment:**

The instructions for completing the Notice of Intent previously specified that the permit boundaries for non-traditional MS4s are the property boundaries. The language has been modified to give general guidance, while allowing for cases where the definition is inappropriate.

**8. Summary of Comment:**

The NOI instructions regarding fees is inconsistent with the fee schedule. The instructions use “resident population” while the fee schedule uses “user population.” UC intends to follow the guidance in the fee schedule.

**Response to Comment:**

The NOI for the adopted General permit was revised to instruct permittees to submit the average daily user population.

\*\*\*\*\*

**9. Summary of Comment:**

The language of the General Permit is vague and ambiguous, leaving the Permittee unsure of permit obligations and potentially subject to third party actions. For instance, as MEP is defined in the General Permit, the Permittee does not know whether it is out of compliance or not.

**Response to Comment:**

The discussion of MEP in the fact sheet to the General Permit describes how the reduction of pollutants to the MEP relies on the implementation of BMPs and that site specific conditions require the standard of MEP to be flexible. Evaluating compliance with MEP requires the use of best professional judgment and has been the approach for Phase I MS4 permits for more than ten years.

**10. Summary of Comment:**

The General Permit does not contain an “authorization” section.

**Response to Comment:**

Under the federal Clean Water Act, discharges to waters of the U.S. are allowed when in compliance with NPDES permits. The General Permit is an NPDES permit.

**11. Summary of Comment:**

The discretion given to the RWQCBs appears to exceed “minor modifications” defined in 40 CFR §122.63, which are allowed by the permitting authority without following official permit modification procedures. For example, impose monitoring, impose region-specific monitoring requirements, require monitoring, report preparation, and implementation of BMPs relative to discharge of non-storm water discharges determined to be a significant source of pollutants, change the annual date of submittal for annual reports, require modification of the SWMP, and specify a longer period for retention of records.

**Response to Comment:**

The examples cited which the commenter believes may go beyond the authority of the RWQCBs are either allowed for in Porter-Cologne, allowed for as part of a “minor modification” as defined in 40 CFR §122.63, allowed for as part of enforcing the General Permit, or allowed for in 40 CFR §122.41 as a condition applicable to all NPDES permits. If a RWQCB’s action required a separate permit action, the RWQCB would have to comply with applicable law when it acts.

**12. Summary of Comment:**

The requirements of the Post-Construction Storm Water Management Minimum Control Measure are redundant. Additionally, the Permittee cannot control the actions of third parties so that even if the Permittee has a program addressing long-term maintenance, it cannot ensure that the long-term maintenance is performed.

**Response to Comment:**

Section D of the General Permit requires the Permittee to maintain, implement, and enforce an effective SWMP designed to reduce the discharge of pollutants from the regulated Small MS4 to the MEP. The enforcement component of the provision is a very important one. As with any rule or law, an ordinance that requires on-going maintenance of BMPs must be strictly enforced to be successful. Additionally, the provision is required by 40 CFR §122.34(b)(5). While a municipality cannot “ensure” that each of its residents will comply with its ordinances, the permit does require it have adequate oversight and enforcement mechanisms.

**13. Summary of Comment:**

The noncompliance reporting requirement should be revised.

**Response to Comment:**

Please see comment C.1 for the discussion of noncompliance reporting.

**14. Summary of Comment:**

Updates to the SWMP and SIE relationships are subject to approvals by the RWQCB EO, however, it is unrealistic for the RWQCB staff to respond to each submittal received in regards to each of these matters.

**Response to Comment:**

RWQCBs will respond as appropriate to ensure that this General Permit is implemented.

**15. Summary of Comment:**

Permittees may have existing permits, which they must comply with that may not be consistent with the Small MS4 General Permit. The Port of Oakland assumes that the discharges covered by another NPDES permit are already authorized, and are not subject to the requirements of this General Permit.

**Response to Comment:**

Discharge Prohibition B.3 states “Discharges of material other than storm water to waters of the United States or another permitted MS4 are effectively prohibited, except as allowed under Provision D.2.c, or as otherwise authorized by a separate NPDES permit.” The General Permit does not regulate nor prohibit other permitted discharges.

**16. Summary of Comment:**

The deadline for SWMP submittal should be extended to September 2003 to allow for carefully planned and thoughtful SWMP to be generated in a cost-effective manner as well as allow public participation and coordination with surrounding entities.

**Response to Comment:**

The General Permit has been modified to include non-traditional Small MS4s as Small MS4s designated by the state and subject to an application deadline of 365 days after notification. Cities and counties that are automatically designated must apply by March 10, 2003 and those designated by the state must apply 180 days after notification. The SWMP submitted with the NOI is not expected to be fully developed.

\*\*\*\*\*

**17. Summary of Comment:**

It is unclear why the number of entities on Attachment 3 was significantly reduced from the revised draft and what the intent of the state is for further designations of governmental Small MS4s.

**Response to Comments:**

The definition of a governmental Small MS4 was modified to subject those facilities that operate an MS4 that is similar to a traditional city or county MS4. Categories have been identified that generally fit this definition. The definition was modified to target those facilities within the federal definition that are more likely to have a water quality impact. Attachment 3 is meant to be complete though it must be recognized that with the number of facilities subject to the permit, there may be instances of oversight or instances where a facility was not accurately listed on Attachment 3. Changes were made from the draft permit where such oversights were identified. Additionally, as noted in the General Permit, subsequent designations may be made.

**18. Summary of Comment:**

It is unclear what constitutes "notification" of an entity to its requirement to obtain permit coverage.

**Response to Comments:**

Section A.1.b. of the General Permit specifies that "written notices will be sent to designated parties subsequent to adoption of this General Permit."

**19. Summary of Comment:**

The wide variety of facilities subject to the General Permit would be more effectively regulated by separate general permits for each type of public entity.

**Response to Comments:**

Although the activities performed by Permittees of the General Permit do vary, they all have ways of reducing pollutants in storm water. The General Permit provides the flexibility necessary for the entities subject to the General Permit to comply with it in some manner. The administrative burden of adopting numerous general permits would be great.

**20. Summary of Comment:**

The second draft of the Small MS4 Permit fails to consider the effect of the overlap between the Phase II Small MS4 Permit and the Large MS4 Permits. The revised fact sheet appears to make it clear there will be overlapping coverage in its statement on page 4 that begins, "while

discharges from Small MS4s serving a city or county within the permit area or a permitted city or county will be regulated under the respective city or county permit....”

**Response to Comments:**

The section on page 4 of the General Permit referred to in the comment above is an explanation of which facilities need coverage under this General Permit. It is in reference to authorities and jurisdictions (i.e. a local agency often lacks authority over state and federal agencies), not overlapping permit requirements.

**21. Summary of Comment:**

Detailed guidance as to stages of compliance expected by the SWRCB on all six minimum control measures is requested.

**Response to Comments:**

Guidance resources regarding compliance with this General Permit are referenced in the Fact Sheet. These resources include SWRCB’s municipal storm water internet site (<http://www.swrcb.ca.gov/stormwtr/municipal.html> and U.S. EPA’s internet site (<http://cfpub.epa.gov/npdes/stormwater/menuofbmps/menu.cfm>). Additional resources include: the Phase II regulations at 40 CFR §122.34, EPA’s Storm Water Phase II Compliance Assistance Guide (EPA 833-R-00-002, March 2000), the Model Urban Runoff Program (<http://www.swrcb.ca.gov/stormwtr/murp.html>), and Colorado’s Phase II Municipal Guidance (<http://www.cdphe.state.co.us/wq/PermitsUnit/ms4guide.pdf>). Permittees may use this guidance in developing a storm water program that is appropriate for the site-specific circumstances.

**22. Summary of Comment:**

In regard to the Post-Construction Minimum Control Measure, it is unclear what stage of a project must that project comply with the SWMP.

**Response to Comments:**

Please see comment C.3 for the discussion of post-construction implementation schedule.

**23. Summary of Comment:**

It is unclear what are the applicable state and local notice requirements that must be complied with under the Public Involvement and Participation Minimum Control Measure.

**Response to Comments:**

The major notification requirements applicable to the Public Involvement and Participation Minimum Control Measure is the Bagley-Keene Open Meeting Act for state agencies and the Brown Act for city and county governments and local agencies. Permittees must determine what additional state and/or local notice requirements apply.

**24. Summary of Comment:**

Safe harbor language should be provided in the General Permit, especially for those entities relying on an SIE.

**Response to Comments:**

As specified in 40 CFR §122.35(a)(3) that the Permittee relying on the separate entity remains responsible for compliance with its permit obligations if the other entity fails to implement the control measure (or component thereof). Because this situation is specified in the federal regulations, safe harbor language cannot be provided.

**25. Summary of Comment:**

Entities whose programs are implemented by a separate entity should not be required to submit a fee because the RWQCB does not have to review a SWMP for that entity.

**Response to Comments:**

Permittees who choose to rely on a storm water permitted SIE to satisfy all six Minimum Control Measures are not required to submit a SWMP nor annual reports. However, these permittees do have a number of responsibilities including the requirement to explain the SIE arrangements to the RWQCB, and to ensure that they are carried out. The RWQCB will expend similar efforts overseeing these arrangements, and will rely on permittee fees to fund efforts of this type.

\*\*\*\*\*

**26. Summary of Comment:**

The SWRCB has and should use its discretion to allow governmental Small MS4s to be covered either by the Industrial Storm Water Permit or the Small MS4 General Permit. Specifically, the Ernest Orlando Lawrence Berkeley National Laboratory does not have a residential population and has had and been in compliance with an Industrial Storm Water Permit that covers the entire facility, for over 10 years.

**Response to Comment:**

Please see comment C.5 for the discussion Industrial and Small MS4 permit overlap.

**27. Summary of Comment:**

The General Permit language should be modified to explicitly allow existing plans and programs already implemented by a Small MS4 to be incorporated by reference into the SWMP

**Response to Comment:**

In response to this comment, the following sentence was added to Storm Water Management Program Requirements Section D: “existing programs that have storm water quality benefits can be identified in the SWMP and be a part of a Permittee’s storm water program.”

\*\*\*\*\*

**28. Summary of Comment:**

The draft permit must clarify the applicability of the permit to small MS4s that are county-owned and/or operated facilities where the County is regulated under a permit issued under Phase I.

**Response to Comment:**

If the county is regulated under a Phase I MS4 permit, then discharges from the county's MS4, including the facility in question, are permitted under that Phase I permit. If the Phase I permit only covers a portion of that county, and another portion of the county is subject to the Small MS4 permit, coverage depends on permit boundaries.

**29. Summary of Comment:**

If a Small MS4 is not within a county or city listed in attachment 1 or 2, or owned and operated by a governmental facility identified in attachment 3 of the draft General Permit, can it be presumed that the small MS4 is not a regulated MS4 for the purpose of the General Permit?

**Response to Comment:**

Yes, that can be presumed. However, Small MS4s already subject to a Phase I MS4 permit will remain regulated by that permit.

**30. Summary of Comment:**

What is the authority of the RWQCB to exempt or modify the permit requirements if the small MS4 is already regulated by the RWQCB under other programs such as Waste Discharge Requirements (WDRs) and industrial storm water programs?

**Response to Comment:**

The RWQCB can modify existing permits to incorporate storm water provisions that would take the place of coverage under the Small MS4 General Permit. If a facility is subject to WDRs that were not adopted as an NPDES permit, the facility must be subject to this General Permit. The modified permit must satisfy all requirements of the General Permit. Also, as discussed in comment C.5, Small MS4s that comply with an Industrial Permit that covers the entire site (not just the industrial area) and that satisfies all six Minimum Control Measures, are not subject to the Small MS4 General Permit.

**31. Summary of Comment:**

The requirements of the Industrial Storm Water General Permit and the Small MS4 General Permit present significant overlap for many governmental Small MS4s. Because of this, entities should only be required to comply with one of the two permits.

**Response to Comment:**

Please see comment C.5 for the discussion Industrial and Small MS4 permit overlap.

\*\*\*\*\*

**32. Summary of Comment:**

The discharge prohibitions, as currently drafted, are effectively unattainable. The following language is suggested:

*Discharges from the MS4s regulated under this permit that cause or threaten to cause pollution, contamination, or nuisance shall be effectively prohibited through implementation and enforcement of the six minimum control measures. Discharge of material other than storm water, including wastes that are prohibited through by Statewide or applicable Regional Water Quality Control Plans (Basin Plans), to waters of the United States or another permitted MS4*

*shall be effectively prohibited through the implementation and enforcement of the six minimum control measures, except as allowed under Provision D.2.c, or as otherwise authorized by a separate NPDES permit.*

**Response to Comment:**

In response to the comment, Discharge Prohibition B.3 was modified to require the *effective* prohibition of material other than storm water. However, as discussed in the response to comment B.13, the prohibition of against creating a nuisance reinforces the prohibitions found in Basin Plans. Except for the modification noted above, SWRCB believes the discharge prohibitions are necessary as written.

**33. Summary of Comment:**

The non-storm water discharges authorized by the Industrial Storm Water General Permit are less restrictive than those authorized by the Small MS4 General Permit.

**Response to Comment:**

The non-prohibited non-storm water discharges within the Industrial General Permit are not recognized as being less restrictive than those within the Small MS4 General Permit.

**34. Summary of Comment:**

The General Permit uses ambiguous and confusing language as well as absolute terms. These types of terms are inappropriate for use in the General Permit.

**Response to Comment:**

The General Permit uses “absolute” language when reference is made to a regulatory requirement. What the commenter finds to be ambiguous is the flexibility of the permit to address the varied circumstances a discharger subject to this permit may face.

**35. Summary of Comment:**

The word “nuisance” and the phrase “threaten to cause nuisance” should be defined.

**Response to Comment:**

CWC §13050(m) defines nuisance as anything which meets all of the following requirements:

- (1) In injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.
- (2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.
- (3) Occurs during, or as a result of, the treatment or disposal of wastes.

“Threaten to cause nuisance” is determined by best professional judgment. Restatement of section 13050(m) in the General Permit is not necessary.

**36. Summary of Comment:**

Section D.2.e.1 requires post-construction controls for projects that disturb one acre or greater whether or not they create one acre of impervious surfaces. The requirements should be based on resulting impervious surface area.

**Response to Comment:**

The disturbance of one-acre threshold comes directly from 40 CFR §122.34(b)(5)(i).

**37. Summary of Comment:**

Section D.4 requires that a person be identified that will implement each minimum control measure. This should be expanded to identify a department or position or the provision should be eliminated.

**Response to Comment:**

Section D.4 of the General Permit is taken from 40 CFR §122.34(d)(1)(iii)

**38. Summary of Comment:**

The MEP definition in the General Permit is not consistent with the one in the CWA or Federal Register.

**Response to Comment:**

Please see comment B.18 for the discussion on MEP.

**39. Summary of Comment:**

Funding issues are of great concern, especially in light of the case of Howard Jarvis Taxpayers Association of Salinas and the current, tight economic times.

**40. Response to Comment:**

We are also concerned with the funding challenges permittees may face in developing and implementing a storm water program. The flexible nature of the General Permit, such as accepting existing programs as part of the SWMP and allowing until the end of the permit term to fully implement a SWMP, should help accommodate budgetary constraints while still adequately addressing water quality impacts from storm water.

**41. Summary of Comment:**

The noncompliance reporting provision is ambiguous.

**Response to Comment:**

Please see comment C.1 for the discussion on noncompliance reporting.

**42. Summary of Comment:**

Some of the requirements of the minimum control measures are not applicable to water districts. Specifically, it is not appropriate for water agencies to adopt ordinances. Additionally, Provision D.2.c.5 requires Permittees to “inform public employees, businesses, and the general public of the hazards that are generally associated with illegal discharges and improper disposal of waste,” which may not be appropriate for special districts. The

requirement could be rewritten as “inform target audiences, such as public employees, businesses, and the general public....”

**Response to Comment:**

The allowance for “other regulatory mechanism” applies to special districts as well as state and federal agencies. The language of Provision D.2.c.5 was taken from the federal regulations.

**43. Summary of Comment:**

The new outfall notification requirement is substantial.

**Response to Comment:**

Please see comment C.15 for the discussion on new outfall notification.

\*\*\*\*\*

**44. Summary of Comment:**

Vandenberg Air Force Base should be removed from Attachment 1, the list of automatically designated Small MS4s. Conditions at the site do not match the definition of urbanized area.

**Response to Comments:**

According to maps representing data from the Bureau of the Census, Vandenberg Air Force Base is within an urbanized area and therefore will remain on Attachment 1. The storm water program developed and implemented at Vandenberg should be appropriate for site conditions.

\*\*\*\*\*

**E. Comments from 3 Regional Boards:**

**1. Summary of Comment:**

The General Permit is too weak to be an effective tool to regulate storm water discharges from MS4s. In particular, the Standard Urban Storm Water Mitigation Plan (SUSMP) requirements should be reinstated and expanded, receiving water limitations should also be reincorporated, and more detailed and specific provisions must be incorporated into the General Permit.

**Response to Comment:**

The General Permit regulates entities that have previously been unregulated. As such, storm water regulation is progressing and as a result, storm water quality will benefit over time. However, because it is a first MS4 permit for these municipalities, newly regulated entities will need time to match the efforts of Phase I communities.

Many of these entities may not be equipped to implement SUSMP requirements. While it is true that cities currently under a Phase I permit are in some cases smaller than the Small MS4s that will be regulated under this General Permit, there is a large lead permittee that they could follow and/or share costs and resources.

With that understanding, however, it is recognized that many Phase II communities are similar to Phase I communities and should have similar requirements. Therefore, communities with more than 50,000 people are required to have SUSMPs and comply with receiving water

limitations. It is also recognized that communities experiencing high growth have a unique opportunity for pollution prevention and are therefore also required to have SUSMPs and comply with receiving water limitations.

\*\*\*\*\*

**2. Summary of Comment:**

Include language in the General Permit that retains the discretion of the RWQCB EO to require additional monitoring, that authorizes the RWQCB EO to designate Small MS4s that are special districts and not initially designated by the State Board, that requires the SWMP be modified if required by the RWQCB EO as a way to address TMDLs.

**Response to Comment:**

The General Permit includes language that addresses these issues through the authority of the RWQCB, not the EO. Giving such authority to the EO may go beyond the authority of the General Permit because it could change the permit terms without the public process. Such revisions would have to be adopted as a new permit.

\*\*\*\*\*

**3. Summary of Comment:**

The following entities should not be designated as regulated Small MS4s, as the current draft General Permit indicates: the Cities of Adelanto and Barstow, the Marine Corps Mountain Warfare Training Site, Sierra Army Depot, Barstow Marine Corps Logistics Site, China Lake Naval Air Weapons Station, Edwards Air Force Base, Fort Irwin, Barstow College, Adelanto Elementary School, and Barstow Unified School District.

**Response to Comment:**

Based on anticipated water quality impacts and in accordance with the designation criteria, the requested changes to Attachment 3 have been made.

**4. Summary of Comment:**

The Permit should include a finding explaining that additional permittees may be subsequently enrolled in the program after the Permit is adopted.

**Response to Comment:**

The Fact Sheet to the General Permit has been modified to include the following language:

*All other small MS4s that, in the future, receive notification from the SWRCB or RWQCB that they are designated pursuant to the criteria listed in this Permit, must submit an NOI, SWMP and fee (if applicable) within 180 days from notification, unless a later date is specified.*

**5. Summary of Comment:**

There seem to be inconsistencies in what is and what is not listed in Attachment 3.

**Response to Comment:**

Attachment 3 is as consistent and complete as possible, but more entities may be added.

**6. Summary of Comment:**

Some type of characterization of storm water runoff should be required to establish baseline conditions and track the effectiveness of a Permittee's SWMP.

**Response to Comment:**

There are various methods to determine program effectiveness. Since permittees must achieve measurable goals and evaluate their programs, they will explore some of these methods. One such method may be chemical monitoring of receiving water. Additionally, if an RWQCB finds that chemical monitoring is an appropriate method for the circumstances and priorities in that region, it may require such chemical characterization. The permit is written consistent with the EPA regulations, which do not require such monitoring.

\*\*\*\*\*

**F. Comments from 4 Organizations**

**2 Generally the same as those from "Individuals," see above**

\*\*\*\*\*

**1. Summary of Comment:**

Municipalities cannot absolutely eliminate all non-storm water discharges. CASQA suggests that the requirement be to *effectively* prohibit non-storm water discharges into the MS4.

**Response to Comment:**

The General Permit has been modified to incorporate the suggestion.

**2. Summary of Comment:**

Requirement D.2.c.6 should be modified to read as follows: "address non-storm water discharges or flows (i.e., authorized non-storm water discharges). The following non-storm water discharges are allowed and do not need to be addressed unless you identify them as significant contributors of pollutants to the Small MS4...".

**Response to Comment:**

The language provided in the above comment provides little modification to the original requirement, and therefore, the language in the provision remains consistent with the language provided in the federal regulations.

**3. Summary of Comment:**

The noncompliance-reporting requirement should be modified to be consistent with the requirement in the initial draft, but with the following additional language. "The MS4 may assume that the time schedule and corrective actions are acceptable to the appropriate RWQCB if no response is received within 30 day s of the notification."

**Response to Comment:**

Please see comment C.1 for the discussion of noncompliance reporting.

**4. Summary of Comment:**

The 90-day reporting requirement for new outfalls should be modified to require the information in the annual report and not require the land use or drainage area information.

**Response to Comment:**

Please see comment C.15 for the discussion of new outfall notification.

**5. Summary of Comment:**

The revised draft Permit should not have removed the ground water protections contained in Finding 11 of the draft Permit.

**Response to Comment:**

As an NPDES permit, the General Permit implements the authority of the Clean Water Act to regulate discharges of storm water runoff to waters of the U.S. The State and Regional Boards can rely on the authority in the CWC separately to regulate discharges to waters of the State, specifically groundwater.

**6. Summary of Comment:**

The revised draft Permit should not have removed the provision which prohibited discharges that cause or threaten to cause pollution or contamination.

**Response to Comment:**

Please see the discussion at comment B.13 regarding the prohibition against discharges that cause or threaten to cause nuisance. Staff proposed to eliminate the reference to contamination and pollution from the draft Permit because such discharges were already prohibited through discharge prohibition B.1 (discharges prohibited by Basin Plans).

**7. Summary of Comment:**

The revised draft Permit should not have removed the provision which prohibited discharges that are likely to jeopardize endangered species.

**Response to Comment:**

As a state action, the General Permit is not required to contain a reference to this federal Act. Based on comments it received, the SWRCB decided to implement a permit that closely follows the EPA regulations.

**8. Summary of Comment:**

The General Permit should contain the same level of specificity as contained in Phase I MS4 permits.

**Response to Comment:**

Please see the response to Comment E.1, which describes the relationship between this General Permit and Phase I MS4 permits.

**9. Summary of Comment:**

The Fact Sheet to the General Permit mischaracterizes the application requirements and implies that the permittee can secure permit coverage without submittal of a SWMP.

**Response to Comment:**

The Fact Sheet was revised to clarify that an applicant must submit the SWMP with its NOI to secure coverage under the adopted General Permit.

**10. Summary of Comment:**

Section D.5 of the General Permit impermissibly allows termination of coverage if the permittee has eliminated all discharges of runoff, even if the permittee continues to discharge non-storm water.

**Response to Comment:**

Section D.5 allows termination of the General Permit if the Permittee has “eliminated discharges.” The permit regulates storm water discharges. If the MS4 has other discharges, it would have to obtain the appropriate permit. The type of non-storm water discharge envisioned by the comment would likely require a different kind of NPDES permit.

**11. Summary of Comment:**

The main goal of this General Permit should be to reduce and eliminate discharges to waters of the United States. The goal, as described in the Fact Sheet, should not be to take an “interdisciplinary approach to storm water.”

**Response to Comment:**

The Fact Sheet revised to describe the main purpose as one to protect water quality.

**12. Summary of Comment:**

Objection to the “ramping up” period in which SWRCB will not use standards established for Phase I communities as the standards for Phase II communities.

**Response to Comment:**

As the permitting authority, the SWRCB is requiring through the General Permit that permittees have a fully developed and implemented storm water program within the five year permit term, as allowed by 40 CFR §122.34(a). SWRCB recognizes that establishing new programs often take time because of resources, political structures and requirements, and stakeholder involvement trends, and therefore allows for the five year “ramping up” period.

**13. Summary of Comment:**

The General Permit unlawfully delegates many requirements of the Clean Water Act to the permittees and the RWQCB Executive Officer.

**Response to Comment:**

In adopting the General Permit, the SWRCB assumes that the municipal permittee is generally in the best position to identify site-specific cost-effective BMPs that will reduce its discharge of pollutants to the MEP. This method has been used for the last 10 years in the Phase I program, and is being continued for Phase II. Next, the RWQCB Executive Officer is responsible for

implementing and executing the requirements of this General Permit. In reviewing SWMPs and other submissions, the Executive Officer will determine whether the permittee or applicant has complied with the terms of this General Permit.

**14. Summary of Comment:**

The Draft Permit lacks elements of Phase I permits and Phase II permits found throughout the country. Specifically, when compared to the Environmental Protection Agency's model Small MS4 permit and other permits, the Draft Permit falls short in several areas.

**Response to Comment:**

Although not identical to other Phase I permits in California or EPA's model permit, the General Permit is designed to regulate discharges from Small MS4s in a manner that is protective of water quality. While we appreciate the need to compare programs for consistency, we must also consider that had the purpose of Phase II requirements been to replicate Phase I requirements, there would not have been separate regulations. In reading the Phase II rule and its preamble, it is obvious that these requirements were not meant to duplicate Phase I requirements but to augment storm water regulations appropriately, using valuable lessons learned over the past 12 years. Moreover, the draft permits cited have not yet been adopted, and may well change from their current form.

SWRCB carefully considered both the Phase II regulations and current Phase I MS4 permits, and adopted a permit that requires Small MS4s to reduce the discharge of pollutants to the MEP. In accordance with this, the General Permit closely follows the Storm Water Phase II regulations. The appropriateness of this method is supported by 40 CFR §122.34(e)(2), which states: "EPA strongly recommends that until [its evaluation in 2012], no additional requirements beyond the minimum control measures be imposed on regulated small MS4s without the agreement of the operator of the affected small MS4, except where an approved TMDL or equivalent analysis provides adequate information to develop more specific measures to protect water quality."

**15. Summary of Comment**

The Draft Permit "fails to satisfy various legal requirements for all NPDES permits." The Draft Permit fails to incorporate all conditions set forth in 40 CFR §§122.41(a)(1)(n) and 122.42.

**Response to Comment:**

Only the applicable provisions must be included, as stated in 40 CFR §122.34(f).

**16. Summary of Comment:**

The Draft Permit misinterprets MEP by including the consideration of feasibility.

**Response to Comment:**

As discussed in comment B.13, the Fact Sheet's discussion of MEP was revised to ensure consistency with the Clean Water Act.

**17. Summary of Comment:**

The Draft Permit does not require distribution of educational materials or equivalent materials outreach activities for purposes of public education and outreach.

**Response to Comment:**

The adopted General Permit contains this requirement at provision D.2.a.

**18. Summary of Comment:**

The Draft Permit does not require use of ordinances or other regulatory mechanisms to adequately address post-construction runoff from new development and redevelopment projects.

**Response to Comment:**

The adopted General Permit contains this requirement at provision D.2.e.3.

**19. Summary of Comment:**

The Draft Permit does not require application for coverage under the general permit to state measurable goals for best management practices.

**Response to Comment:**

The SWMP, which is to be submitted along with the Notice of Intent, must identify measurable goals for each of the BMPs, as required by provision D.3.

**20. Summary of Comment:**

The Draft Permit does not require monitoring of MS4 discharges.

**Response to Comment:**

Please see comment C.6 for a discussion on chemical monitoring.

**21. Summary of Comment:**

The Findings contained in the Draft Permit fail to adequately illustrate the severity of the urban runoff problem.

**Response to Comment:**

Findings 1 through 5 of the General Permit describe and illustrate the detrimental effects of urban runoff.

**22. Summary of Comment:**

Considering the high population and land area growth rates of areas subject to the Small MS4 permit, the Draft Permit is not strong enough.

**Response to Comment:**

SWRCB recognizes the importance of the above mentioned factors and included more stringent controls (compliance with Receiving Water Limitations and specified design standards) for fast-growing areas. Additionally, the General Permit requires site specific conditions to be evaluated in developing and implementing a SWMP. This will require that certain

communities have a more robust program in order to comply with the General Permit provisions.

**23. Summary of Comment:**

The purpose of the Draft Permit (Findings 8 and 16) should be clarified to be consistent with State Board Order WQ 99-05 and “ensure that ‘flows from the MS4s do not cause or contribute to an exceedance of water quality objectives in receiving waters.’”

**Response to Comment:**

Please see the response to comment E.1, which describes the Receiving Water Limitations provision that will apply to larger and fast growing Small MS4s.

**24. Summary of Comment:**

Finding 11 of the Draft Permit, which describes the criteria for designating regulated Small MS4s is not consistent with 40 CFR §123.35(b). Finding 11 states that high population density means an area with greater than 1,000 residents per square mile while 40 CFR states that a high population density area is an area with at least 1,000 residents per square mile.

**Response to Comment:**

40 CFR §123.35(b) does not define the high population density designation criteria. The regulations suggest at 123.35(b)(1)(ii), in guidance, that high population density be used as one of the factors to consider as part of the designation criteria. Section 123.35(b)(2) requires the permitting authority to apply the developed criteria, at a minimum, to any small MS4 located outside of an urbanized area serving a jurisdiction with a population density of at least 1,000 people per square mile and a population of at least 10,000.

**25. Summary of Comment:**

Finding 11 uses a 10% by volume to determine whether a discharge from one MS4 is a significant contributor of pollutants to another MS4. However, there is no basis to relate volume to pollutant loading. Therefore, the Finding should be modified.

**Response to Comment:**

As discussed in the Fact Sheet to the General Permit, the 10% threshold was established for general use with the notion that there may be a more appropriate measure in specific cases. The flow-based number, however, is more readily applied in many cases.

**26. Summary of Comment:**

Finding 11 does not discuss changed circumstances for the municipalities.

**Response to Comment:**

The role of the RWQCB has been explicitly expanded to include making additional designations of regulated Small MS4s. If circumstances for a municipality change, the RWQCB can designate the municipality at that time, if necessary.

**27. Summary of Comment:**

Finding 11 does not discuss contiguous urbanized areas.

**Response to Comments:**

MS4s within urbanized areas are automatically designated as regulated Small MS4s. In defining urbanized areas, the Bureau of the Census accounts for those populated areas contiguous to more heavily populated areas by decreasing the required population density required to increase the boundary of an urbanized area, once the initial “core” has been established. As the urbanized area increases, so does the MS4 permit area.

**28. Summary of Comments:**

The definitions of MEP contained in the Draft Permit are inconsistent with each other and inconsistent with the CWA.

**Response to Comment:**

Please see comment B.13 for the discussion of the MEP standard.

**29. Summary of Comment:**

The Draft Permit should include a list of the beneficial uses of the receiving waters of the discharges regulated under the General Permit. Alternatively, at a minimum, a condition of permit coverage should be to supply the beneficial uses that may be affected by the discharger.

**Response to Comment:**

Permittees must submit the name and location of receiving waters in their permit application. Additionally, the General Permit references Basin Plan requirements, where the associated beneficial uses can be identified.

**30. Summary of Comment:**

The Draft Permit does not provide an analysis to come to the conclusion that the permit is consistent with federal and state anti-degradation requirements. Such an analysis must be performed.

**Response to Comment:**

Finding 23 contains the required anti-degradation analysis. Prior to adoption of this General Permit, the regulated storm water discharges were unregulated. Compliance with this General Permit will not result in degradation of water quality.

**31. Summary of Comment:**

The General Permit must include the waste load allocations for each permittee for each of the Total Maximum Daily Loads that have been established.

**Response to Comment:**

All NPDES permits must be “consistent with the assumptions and requirements” of Total Maximum Daily Loads that have been adopted for an applicable receiving water. 40 CFR §122.44(d)(1)(vii)(B). The NOI of the adopted General Permit requires the permittee to identify the receiving waters to which it discharges. It is understood that the RWQCBs will ensure that SWMPs are consistent with the assumptions and requirements of any applicable TMDL. If a separate or revised permit is necessary to assure consistency, it will be issued.

**32. Summary of Comment:**

Several important discharge prohibitions contained in the USEPA model permit and a Southern California Phase I MS4 permit need to be added or clarified in the Draft Permit.

**Response to Comment:**

For a discussion of the discharge prohibitions included in the adopted General Permit, please see the response to comment B.13.

**33. Summary of Comment:**

The Effluent Limitation C.1 of the Draft Permit incorrectly references 40 CFR §122.44(k)(2).

**Response to Comment:**

In response to the comment, SWRCB has included that reference as a finding instead of a permit provision. SWRCB finds that 40 CFR §122.44(k)(2), promulgated as part of the Phase II regulations, endorses the use of BMPs in lieu of numeric effluent limitations in NPDES storm water NPDES permits.

**34. Summary of Comment:**

The Illicit Discharge and Elimination requirements contained in the Draft Permit are inadequate. It does not contain schedules for elimination of detected illicit discharges or for inspections.

**Response to Comment:**

The main requirement of the Illicit Discharge Detection and Elimination Minimum Control Measure is to “develop, implement and enforce a program to detect and eliminate illicit discharges into the regulated Small MS4.” This program element must also be implemented to reduce the discharge of pollutants to MEP. Therefore, the permittees must inspect for illicit discharges and eliminate detected illicit discharges as soon as practicable, but in any event by the end of the permit term.

**35. Summary of Comment:**

The Post-Construction Storm Water Management in New Development and Redevelopment requirements contained in the Draft Permit are inadequate.

**Response to Comment:**

The adopted General Permit requires the permittee to use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects, with a combination of structural and/or non-structural BMPs, and to ensure the long-term maintenance. Additionally, as described in response to comment E.12, larger or fast-growing small MS4s will need to impose more detailed controls upon high-risk development sites.

**36. Summary of Comment:**

The General Permit should contain at least basic monitoring requirements.

**Response to Comment:**

Chemical monitoring requirements have not been added to the General Permit. SWRCB agrees with EPA that relying on existing data or locally-driven monitoring plans will be more efficient.

**37. Summary of Comment:**

The General Permit should require annual reporting, which should not be subject to RWQCB EO modification.

**Response to Comment:**

The RWQCB EO is given the authority to modify annual report due dates in order for RWQCB resources to be used most efficiently. The annual reports must remain “annual” but it gives RWQCBs flexibility, for example, to receive Small MS4 annual reports at a different time than they receive annual reports for the General Industrial Storm Water Permit.

**38. Summary of Comment:**

The Notice of Intent attached to the General Permit does not require all of the information referenced in 40 CFR §122.33 and EPA’s model permit.

**Response to Comment:**

SWRCB is requiring much of the same information in its Notice of Intent, as is required by the abovementioned permit. However, the EPA model permit does not have the effect of law, and may be revised before it is adopted, whereas 40 CFR §122.33 does. The adopted General Permit’s Notice of Intent requires all of the applicable information required by 40 CFR §122.33.

**39. Summary of Comment:**

The General Permit should provide a menu of BMPs that satisfy the MEP standard. A menu would assist small MS4s in design and implementation of their SWMP as required by 40 CFR 123.35(g).

**Response to Comment:**

EPA has provided the most complete list of BMPs in its BMP toolbox (<http://cfpub.epa.gov/npdes/stormwater/menuofbmps/menu.cfm>). The General Permit incorporates this menu. BMPs are not evaluated individually for compliance with MEP. It is not a single BMP that achieves MEP, but an array of BMPs together, forming a storm water program.

\*\*\*\*\*

**40. Summary of Comment:**

The General Permit should include Receiving Water Limitations language. Such language would prohibit discharges from the MS4 that cause or contribute to the violation of water quality standards; and describe an iterative process towards compliance, as mandated by SWRCB in WQ 2001-15 and 99-05.

**Response to Comment:**

See response to regional board comment on this issue

**41. Summary of Comment:**

Require monitoring to assess Permit compliance, characterize storm water discharges, identify sources of pollutants. If violations are found through monitoring, a corresponding time schedule for achieving compliance should be required.

**Response to Comment:**

As discussed in comment C.6, monitoring is not required by the General Permit. However, Permittees must develop a SWMP designed to reduce pollutants to MEP and protect water quality. They must evaluate the effectiveness of the program and make improvements as necessary to accomplish the goals of the program. Those larger or faster-growing Small MS4s must also comply with receiving water limits and must correct any exceedance found, in an iterative manner through implementation of better-tailored BMPs.

**42. Summary of Comment:**

The General Permit should include detailed public education and participation that requires the permittees to identify and target audiences, set measurable goals, and make a certain number of minimum impressions.

**Response to Comment:**

The draft permit requires the permittees to develop and implement a public education program and propose measurable goals for each of the education components (BMPs) selected. As part of their annual report, they are to assess progress being made towards achieving the measurable goal. The public participation minimum control measure is taken from the federal regulations. Staff believes that through this measure, the public will have ample opportunity to participate in the decision making process used by a local agency.

**43. Summary of Comment:**

The permit should contain post construction controls including requirements to implement the Standard Urban Storm Water Mitigation Plans (SUSMP) program approved by SWRCB WQ 2000-11 and maintain predevelopment hydrology.

**Response to Comment:**

Order 2000-11 does not apply to the Phase II permittees. Evidence of this intent is the Summary of the Order, which states in a footnote that “The Order considered a Phase I storm water permit, applicable to urban areas with populations of 100,000 and greater. The State Water Board will soon embark on Phase II, which will include municipal permits for smaller municipalities. The Order did not address Phase II requirements, which may be different than Phase I requirements.” Permittees are to develop programs that do address post-construction site runoff control, some of which may be consistent with the provisions of Order 2000-11.

However, SWRCB recognized that Small MS4s with populations greater than 50,000 or those with high growth are similar to or will soon be similar to medium MS4s and therefore should also have SUSMP requirements. Additionally, because the post construction program is applicable to construction protects, areas experiencing significant construction are also required

to implement SUSMP requirements to ensure that storm water quality is considered at the design phase.

**44. Summary of Comment:**

The permit should include a permit definition of MEP that is consistent with Clean Water Act Section 402(p)(3)(B)(iii) and that states that permittees must choose effective BMPs and reject applicable BMPs only where other effective BMPs will serve the same purpose.

**Response to Comment:**

Please see comment B.13 for the discussion of the MEP standard.

**45. Summary of Comment:**

The permit should contain a construction site runoff control program that includes inspections and requirements that sediments are kept on-site, that grading practices are appropriate for the location and riparian buffers are preserved.

**Response to Comment:**

The adopted General Permit requires the permittee to develop an ordinance or other regulatory mechanism to require erosion and sediment controls with sanctions for non-compliance; require that site operators implement appropriate erosion and sediment control practices; and procedures for site inspections. These requirements are not spelled out in the level of detail of current Phase I permits, but the requirements still exist and must be addressed by the permittee.

**46. Summary of Comment:**

The permit should contain a control program for commercial and industrial facilities that includes inspections.

**Response to Comment:**

This suggestion is beyond the scope of the current Phase II regulations as promulgated by USEPA. Because the General Permit is the first storm water permit for these smaller communities and entities, SWRCB decided not to expand the responsibilities of the permittees.

**47. Summary of Comment:**

The permit should contain a compliance deadline for permittees to fully develop and implement their SWMP.

**Response to Comment:**

The compliance deadline is the end of the permit term, with reasonable further progress throughout the annual cycle.

**48. Summary of Comment:**

There are many small communities now being regulated as Phase I dischargers, so those permittees that will be regulated under the Phase II General Permit should have similar requirements.

**Response to Comment:**

While it is true that there are small communities that are now being regulated under Phase I permits, there are difference between them and those that will be regulated under the Phase II General Permit. The main difference is that those regulated under Phase I lie within the “sphere of influence” of a Phase I municipality, where there can be significant sharing of implementation costs and efforts. Many of the Phase II communities are essentially stand alone where the opportunities to share costs and efforts with another entity may not exist. Additionally, those communities that are regulated under Phase I have had over 10 years to develop their current storm water programs. The General Permit gives these communities time to develop their programs.